UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES A. BOYD, Plaintiff, v. JOSEPH LEHMAN, et al., Defendants.	CASE NO. C05-0020-JLR REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff is a state prisoner who is currently incarcerated in the Washington State Reformatory Unit ("WSRU") of the Monroe Correctional Complex ("MCC") in Monroe, Washington. He brings this action under 42 U.S.C. § 1983 to allege that defendants violated the First and Fourteenth Amendments to the United States Constitution, the Washington State Constitution, and the Religious Land Use and Institutionalized Person Act ("RLUIPA") when they denied him his religiously mandated diet and caused him to receive his evening meal before sunset at the beginning of Ramadan in 2004. Plaintiff identifies the following individuals as defendants in this action: Joseph Lehman, Secretary of the Department of Corrections ("DOC"); Dan Williams, Religious Program Manager for the DOC; and Linda Haptonstall, Chaplain for the

Washington State Reformatory Unit of the MCC. Plaintiff seeks declaratory and injunctive relief, and damages.

Defendants have filed a motion for summary judgment. Plaintiff has filed a brief in opposition to defendants' motion, and defendants have filed a reply brief in support of their motion. This Court, having reviewed defendants' motion, and the balance of the record, concludes that defendants' motion for summary judgment should be granted and plaintiff's complaint, and this action, should be dismissed with prejudice.

FACTS

Plaintiff is a Muslim inmate who has been incarcerated at MCC since May 2004[1]. (Dkt. No. 40, Attachment A.) Prior to 2002, Muslim inmates in the DOC were provided with a non-pork diet. (Dkt. No. 39, Ex. 7. at 1.) The non-pork diet was one of 14 different diets provided by the DOC to accommodate a variety of religious and medical needs. (*Id.*) In 2002, the mainline diet was made pork-free, and the 14 diet plans were consolidated into six plans that effectively met the religious and medical needs of all inmates. (*Id.*, Ex. 4 at 1-2.)

According to plaintiff, defendant Haptonstall, in July 2004, authorized plaintiff to receive the kosher diet in an effort to accommodate his religious dietary requirements. (Dkt. No. 50 at 7.) However, plaintiff was only provided kosher meals for about two weeks. (*Id.*; *see also*, Dkt. No. 40, Ex. 2 at 3.) The practice of providing kosher meals to Muslim inmates was stopped because it greatly increased food costs and, according to the DOC, was not necessary to meet the nutritional and religious requirements of Muslim inmates. (Dkt. No. 40, Ex. 2 at 3.) Thereafter,

[1] It appears from the record that plaintiff, who has been in Washington Department of Corrections custody since 1992, was also incarcerated at MCC from July 2001 to April 2002.

an ovo-lacto vegetarian diet was authorized for Muslim inmates. (*Id.*) Defendants contend that the ovo-lacto vegetarian meals are nutritionally adequate and meet the religious requirements for Muslims. (*See id.*) Plaintiff contends that the non-meat diet violates Muslim religious practices and is discriminatory. (Dkt. No. 7 at 3.)

Also at issue in this action are events which transpired during the month of Ramadan in 2004. The first day of Ramadan 2004 was October 15, 2004. (Dkt. No. 40, Ex. 3 at 2.) Islamic law requires that Muslims abstain from all food and drink during daylight hours for the entire month of Ramadan. (Dkt. No. 39, Ex. 6 at 7.) Accordingly, arrangements were made to provide inmates participating in Ramadan a hot morning meal before the period of fasting began. (Dkt. No. 40, Ex. 3 at 2.)

Arrangements were also made for inmates participating in Ramadan to be called to the dining hall with the last group to eat their hot evening meal.[2] (*Id.*) However, this plan resulted in the Muslim inmates being served their evening meal before sunset, which was not acceptable. David Sherman, head chaplain at MCC, became aware of the timing problem regarding the evening meal on approximately October 17, 2004, and took steps to rectify it. (*Id.*) The problem was solved by allowing inmates to take their trays back to their cells with them. (*Id.*) Because of the rapid effort to rectify the problem, plaintiff was served his evening meal prior to sunset on only the first three days of the month of Ramadan in 2004.

/ / /

/ / /

---

[2] At the time of their evening meal, Muslim inmates were also provided with a supplemental sack lunch to be consumed sometime after the evening meal. (Dkt. No. 40, Ex. 3 at 2.)

DISCUSSION

Summary Judgment Standard

Summary judgment is proper only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). Genuine disputes are those for which the evidence is such that a "reasonable jury could return a verdict for the nonmoving party." *Id.* Material facts are those which might affect the outcome of the suit under governing law. *Id.*

In response to a properly supported summary judgment motion, the nonmoving party may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a motion for summary judgment, the court is required to draw all inferences in a light most favorable to the non-moving party. *Id.* at 248. The court may not weigh the evidence or make credibility determinations. *Id.*

First Amendment Violation

The First Amendment guarantees the right to the free exercise of religion. However, the Supreme Court has noted that the free exercise right "is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain

prison security." *O'Lone v. Shabazz*, 482 U.S. 342, 348 (1987). In order to establish a free exercise violation, a prisoner "must show the defendants burdened the practice of his religion, by preventing him from engaging in conduct mandated by his faith, without any justification reasonably related to legitimate penological interests." *Freeman v. Arpaio*, 125 F.3d 732, 736 (9th Cir. 1997)(citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

As the Ninth Circuit explained in *Freeman*, "[i]n order to reach the level of a constitutional violation, the interference with one's practice of religion 'must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.'" *Id*. at 737 (quoting *Graham v. C.I.R.*, 822 F.2d 844, 851 (9th Cir. 1987)).

1. Religious Diet

Plaintiff alleges that defendants have violated his First Amendment right to free exercise of his religion by denying him his preferred religious diet. Plaintiff contends that defendants have created a policy which forces Muslim inmates to eat ovo-lacto vegetarian meals. Plaintiff asserts that he is not a vegetarian, and that defendants' refusal to serve him either halal meat or kosher food burdens the practice of his religion.

Defendants argue in their motion for summary judgment that plaintiff cannot show a violation of his First Amendment rights with respect to his religious diet because there is no requirement that Muslims consume meat. In support of this argument, defendants have offered the declarations of defendant Williams and of Brannon Wheeler, a Distinguished Professor of History and Politics, and Director of the Center for Middle East and Islamic Studies at the United States Naval Academy. (Dkt. No. 40, Ex. 2; Dkt. No. 39, Ex. 6.) Defendants have also offered the deposition testimony of plaintiff's expert, Twahiru Mohammed. (Dkt. No. 39, Ex. 5,

Attachment B.) Each of these individuals states essentially the same thing; *i.e.*, that while Islamic law forbids Muslims to eat certain foods, there are no mandated foods, such as meat.

Plaintiff, in his response to defendants' summary judgment motion, argues that halal meat is a required part of the Muslim diet. Plaintiff bases this argument on the fact that the Quran nowhere states that Muslims are, or should be, vegetarians, and on the fact that the Quran instructs Muslims to eat that which Allah has made lawful, which includes certain meats. (*See* Dkt. No. 48 at 19-21.) Plaintiff has provided the Court with excerpts from the Quran which he believes support his argument that the eating of meat is required. In addition, he has submitted the declarations of Chaplain Twahiru A. Qadir, who is identified as a contract chaplain at the Washington State Reformatory, and Imam Makram El-Amin, who both state essentially the same thing; *i.e.*, that Muslims are commanded by God in the Quran to consume meat.[3] (*See* Dkt. No. 50, Ex. A at 1-2, 9-12.)

Plaintiff further argues in his response to defendants' summary judgment motion that the fact that his beliefs regarding what the Quran requires are different from what Twahiru Mohammed or Professor Wheeler interpret the Quran to require does not defeat First Amendment protections. (Dkt. No. 48 at 22.) Plaintiff contends that the relevant inquiry in determining whether his beliefs are entitled to First Amendment protection is not whether, as an objective

---

[3] Plaintiff has actually submitted two declarations of Chaplain Twahiru A. Qadir. It appears that the chaplain, who purportedly signed the declarations offered by plaintiff, and Twahiru Mohammed, the expert deposed by defendants' counsel, are actually the same individual. (*See* Dkt. No. 48 at 14-15 n. 3) The Court notes that the "evidence"provided to the respective parties by this individual appears to be inconsistent. The Court further notes that the two declarations submitted by Chaplain Twahiru A. Qadir both bear signatures, but that the signatures on the two declarations, though similar, are not identical. At this stage of the proceedings, this Court has no way of knowing whether the chaplain did, in fact, execute either of these declarations.

matter, his beliefs are accurate or logical, but, instead, whether the beliefs which he professes are sincerely held and are, in his own scheme of things, religious. (Dkt. No. 48 at 13.) Plaintiff relies upon the United States Supreme Court's decision in *United States v. Seeger*, 380 U.S. 163 (1965), to support this contention.

Plaintiff also relies upon the United States Supreme Court's decision in *Thomas v. Review Board of the Indiana Employment Security Division* , 450 U.S. 707 (1981), to support his argument that it is his own belief system, and not the interpretation of the Quran offered by others, which is controlling. In *Thomas*, the Supreme Court stated that "[t]he determination of what is a "religious" belief or practice is more often than not a difficult and delicate task . . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Id*. at 714.

The Court, in *Thomas,* went on to note that "intrafaith differences . . . are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to Religion Clauses." *Thomas*, 450 U.S. at 715. The Court further noted that "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect," and that "[c]ourts are not arbiters of scriptural interpretation." *Id*. at 715-16.

This authority appears to make clear that where, as here, plaintiff claims to believe that eating halal meat is central to the practice of his religion, and defendants do not challenge the sincerity of that belief, the belief is entitled to First Amendment protections. Accordingly, the Court turns to the next part of the analysis which is to consider whether defendants' decision to

deny plaintiff halal meat and/or kosher meals as a part of his religious diet is rationally related to a legitimate penological purpose.[4] *Turner v. Safley*, 482 U.S. 78 (1987); *O'Lone v. The Estate of Shabazz*, 482 U.S. 342 (1987).

In *Turner*, the Supreme Court identified four factors that must be considered when determining whether a prison regulation that impinges on inmates' constitutional rights is reasonably related to legitimate penological interests:

> First, there must be "'a valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it." Second, whether there are "alternate means of exercising the right that remain open to prison inmates" must be assessed. Third, "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally" must be determined. Fourth, "the absence of ready alternatives" to the regulation must be explored. The "existence of obvious, easy alternatives may be evidence that the regulation is not reasonable."

Ward v. Walsh, 1 F.3d 873, 876 (9th Cir. 1993) (quoting *Turner*, 482 U.S. at 89 (citations omitted)).

The Supreme Court has made clear that a reviewing court "must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003). The Supreme Court has also made clear that the burden is not on the state to provide the validity of

---

[4] This Court was previously presented with a similar claim regarding the Muslim religious diet by another inmate at MCC. *See Turnbow v. Lehman*, C04-2510-JCC. Based upon the evidence and arguments presented by the parties in *Turnbow*, this Court concluded that the inmate had not demonstrated that the defendants had burdened the practice of his religion by preventing him from engaging in conduct mandated by his faith, and the Court therefore did not reach the *Turner* analysis.

a challenged regulation, but is instead on the inmate to disprove it. *Id.*

Under the first *Turner* factor, the Court must consider whether there is a legitimate penological interest behind the policy which authorizes the ovo-lacto vegetarian diet for Muslim inmates. The Ninth Circuit has recognized that prisons have "a legitimate penological interest in running a simplified food service, rather than one which gives rise to many administrative difficulties." *Ward*, 1 F.3d at 877 (citing *Kahey v. Jones*, 836 F.2d 948, 950 (5th Cir. 1988)). The Court, in *Ward*, also noted that "the policy of not providing special diets is related to simplified food service." *Id.*

Cheryl Johnson, the Food Service Program Manager for the Department of Corrections, has provided a declaration in support of defendants' summary judgment motion. (Dkt. No. 39, Ex. 7.) In her declaration, Ms. Johnson states that the DOC currently maintains six diet plans which effectively meet the religious and medical needs of all inmates. (*Id.*, Ex. 7 at 1-2.) She explains that this represents a substantial reduction in the number of diet plans maintained prior to 2002, and states that this simplification of the food preparation process significantly reduced the number of labor hours devoted to the food preparation process.[5] (*Id.*, Ex. 7 at 2.) Ms. Johnson also states in her declaration that "[a]ll special meals create increased demands on staff" and that "[p]reparing a few meals for a few inmates is typically as labor intensive as preparing and distributing food in large quantities." (*Id.*)

Plaintiff counters defendants' assertions regarding the impact on the food preparation process of adding halal meat to the Muslim religious diet with the declaration of a fellow inmate,

---

[5] Ms. Johnson describes this reduction in terms of "FTEs." This Court assumes that this is a reference to "full time equivalents" which is essentially a measurement of the number of labor hours required to accomplish a given task.

Edward Pettit. (Dkt. No. 50, Ex. A at 6-8.) Mr. Pettit states that he is assigned to the inmate kitchen at WSRU where he prepares special diets for the inmate population. (*Id.*, Ex. A at 6.) He opines that adding an item such as halal meat to the ovo-lacto vegetarian diet would not adversely impact his efficiency in preparing the special diets. (Dkt. No. 50, Ex. A at 7-8.)

Even assuming, as Mr. Pettit suggests, that the addition of halal meat would not increase the amount of preparation time required in the kitchen, Mr. Pettit's assessment does not take into account the full impact of adding another menu component. Presumably, the addition of a specialized menu item also requires additional administrative time for purposes of menu planning and procurement of food items. All of these tasks complicate the process to some extent. Because prisons have a legitimate interest in running a simplified food service, and because providing a specialized diet which incorporates halal meat would necessarily complicate that process to some extent, there is a connection here between the policy of providing Muslim inmates the mainline ovo-lacto vegetarian diet, rather than a diet which includes halal meats, and a legitimate penological interest.

Plaintiff suggests as an alternative that he be provided kosher meals. The Court presumes that the kosher meal is one of the six meals already being provided by the DOC. Thus, substituting the kosher diet for the ovo-lacto vegetarian diet for Muslim inmates should not unduly complicate the food service process. The issue with respect to substituting the kosher diet is one of cost. Plaintiff acknowledges that limiting costs is a legitimate correctional goal.

Ms. Johnson explains in her declaration that kosher meals must be prepared in a separate kitchen with separate utensils, and that those meals are therefore prepared off-site by an outside vendor. (Dkt. No. 39, Ex. 7 at 2.) Ms. Johnson states that kosher meals cost two to three times

as much as mainline meals such as the ovo-lacto vegetarian meal. (*Id.*) Because substituting the kosher meal for the ovo-lacto vegetarian meal for Muslim inmates would necessarily increase costs, there is a connection between the policy of providing Muslim inmates an ovo-lacto vegetarian diet, rather than a kosher diet, and a legitimate penological interest.

For the foregoing reasons, this Court concludes that the first *Turner* factor weighs in favor of defendants. *See Ward*, 1 F.3d at 877.

Under the second *Turner* factor, the Court must consider whether there are alternative means of exercising the right at issue. In *Turner*, the Supreme Court stated that "[w]here 'other avenues' remain available for the exercise of the asserted right, courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials ... in gauging the validity of the regulation.'" *Turner*, 482 U.S. at 90 (citations omitted). In *Ward*, the Ninth Circuit explained that the relevant inquiry with respect to the second *Turner* factor "is not whether the inmate has an alternative means of engaging in the particular religious practice that he or she claims is being affected; rather, we are to determine whether the inmates have been denied all means of religious expression." *Ward*, 1 F.3d at 877 (citing *O'Lone*, 482 U.S. at 351-52.) Thus, the question this Court must consider is whether plaintiff has alternate ways to practice his religion generally, not whether he has an alternate way to obtain meat.

Defendants have submitted evidence which establishes that Muslim inmates are provided many alternative ways to exercise their religious rights. Muslim inmates are given time off of work to celebrate two major holidays; *i.e.*, Eidul-Fitr and Eidul-Adha. (Dkt. No. 40, Ex. 3 at 1-2.) Special meals are provided to Muslim offenders on these days and they are permitted to meet together to celebrate. (*Id.*) At MCC, accommodations are made for the five daily required

prayers and, in addition, Muslim inmates are permitted to congregate every Friday for the Jum'ah service. (*Id.*, Ex. 3 at 2.)

In addition, it appears that the staff at MCC has made a substantial effort to ensure that those inmates who observe Ramadan are able to participate in Ramadan activities. Among the accommodations made for Muslim inmates during the month of Ramadan are times set aside each day for morning and evening prayer, an evening prayer/study time, allowing inmates to fast during daylight hours, and providing a feast after the 30 days of fasting have been completed. (Dkt. No. 40, Ex. 3 at 2.) Finally, defendants note that MCC has a Muslim contract chaplain to assist in the religious practice and instruction of Muslim offenders, and that education classes or other activities are often held for Muslim inmates on Saturdays. (Dtk. No. 40, Ex. 3 at 2.)

Plaintiff argues that there are no alternative ways for him to exercise his right to eat halal meat. However, as noted above, the test under the second *Turner* factor is much broader than plaintiff suggests. The record establishes that Muslim inmates at MCC are provided many alternative means of practicing their religion and that substantial accommodations are made to ensure that Muslim inmates are able to participate in significant rituals of their faith. For these reasons, the second *Turner* factor weighs substantially in favor of defendants.

Under the third *Turner* factor, the Court must consider the impact that accommodation of the asserted right will have on staff and on prison resources generally. Defendants assert that providing halal meat would impose a burden on food service preparation and on the numbers of staff required to prepare the meals, and could potentially increase security concerns if contracting with additional vendors became necessary.

As noted above in the Court's consideration of the first *Turner* factor, defendants have

established that the addition of another specialized meal to those already provided by the DOC necessarily complicates the food service process to some extent. However, the Court has yet to address the precise impact on staff and prison resources of adding halal meat to the Muslim religious diet.

Defendants have established, generally, that simplification of the food preparation process reduces the amount of man hours that must be devoted to that process. (*See* Dkt. No. 39, Ex. 7 at 1-2.) Defendants have not, however, offered any evidence to establish that the addition of halal meat to the Muslim religious diet will, in fact, necessitate the hiring of additional staff. And, though defendants assert that the use of alternate vendors would increase security risks, defendants offer no proof that alternate vendors would even be necessary. Thus, this assertion is speculative at best. Finally, the Court notes that while adding special halal meat to the menu would likely increase costs to the DOC, there is no evidence establishing what those costs would be.

Defendants have not provided sufficient evidence to establish that incorporating halal meat into the Muslim religious diet would necessitate hiring additional staff, would increase security risks, or would substantially increase the costs of the religious meals provide to Muslim inmates. Accordingly, to the extent plaintiff requests that he be provided halal meat as a part of his religious diet, the third *Turner* factor weighs in favor of plaintiff.

The Court must also consider the third *Turner* factor in relation to plaintiff's alternative request that kosher meals be substituted for ovo-lacto vegetarian meals as a means of accommodating his asserted right to a diet which satisfies Islamic dietary laws as he understands them. Substituting kosher meals for ovo-lacto vegetarian meals is unlikely to have a significant

impact on staffing requirements because the kosher diet is already being provided by the DOC to some inmates. However, as noted above in the Court's analysis of the first *Turner* factor, defendants have established that substituting kosher meals would substantially increase costs to the DOC. Accordingly, to the extent plaintiff requests that he be provided kosher meals to accommodate his religious dietary needs, the third *Turner* factor weighs in favor of defendants.

Finally, under the fourth *Turner* factor, the Court must consider whether there are alternatives to the DOC's policy which would accommodate plaintiff at a *de minimis* cost to the DOC. The Supreme Court has stated that "the absence of ready alternatives is evidence of the reasonableness of a prison regulation" and that "the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." *Turner*, 482 U.S. at 90-91 (citations omitted).

Defendants asserts that providing ovo-lacto vegetarian meals for plaintiff *is* the alternative to providing halal meats. Defendants argue that by providing these meals, the DOC is able to meet Muslim religious requirements with its regular food service program, and that it therefore does not incur any increased costs. This Court concurs that the ovo-lacto vegetarian meal is a reasonable alternative to providing meals including halal meats.

While plaintiff asserts that halal meats are a required part of the Muslim diet, the ovo-lacto vegetarian diet does not appear to contain any items that are forbidden by plaintiff's religion.[6] The Ninth Circuit has recognized that "requiring a believer to defile himself by doing something that

---

[6] Plaintiff asserts that the ovo-lacto vegetarian diet is not a reasonable alternative because it contains non-halal poultry in the form of eggs. However, plaintiff provides no evidence that eggs are forbidden by the Quran. Moreover, even assuming that eggs are forbidden, the vegan diet offered by defendants would appear to present a reasonable alternative to the ovo-lacto vegetarian diet.

is completely forbidden by his religion is different from (and more serious than) curtailing various ways of expressing beliefs for which alternatives are available." *Ashelman v. Wawrzaszek*, 111 F.3d 674 (9th Cir. 1997). The ovo-lacto vegetarian diet may fall short of full accommodation of plaintiff's religious dietary requirements, as he interprets them, but it does provide him with a diet which is apparently sufficient to sustain him in good health, and which does not require him to eat any foods which are specifically forbidden by the Quran. Thus, even if plaintiff truly believes that he is required to eat halal meat as a part of his diet, this Court is satisfied that the ovo-lacto vegetarian diet presents a reasonable alternative.

This Court is equally satisfied that substituting kosher meals for ovo-lacto vegetarian meals is not a reasonable alternative. Not only are kosher meals substantially more expensive than mainline ovo-lacto vegetarian meals, but, as defendant Williams notes in his declaration, "[k]osher requirements are very specialized and far exceed the halal requirements." (Dkt. No. 40, Ex. 2 at 3.) Thus, providing plaintiff with kosher meals would constitute a significant over-accommodation of his right to a diet which meets the requirements of his religion. Based upon the foregoing, this Court concludes that the fourth *Turner* factor weighs in favor of defendants.

As noted above, plaintiff bears the burden of demonstrating that a challenged regulation is invalid. Plaintiff has not met his burden. This Court has evaluated the evidence presented by the parties under the test set forth in *Turner* and, based upon this evaluation, concludes that defendants' decision to deny plaintiff meals containing halal meat as a part of his religious diet or, in the alternative, kosher meals, is rationally related to a legitimate penological purpose. Accordingly, defendants are entitled to summary judgment with respect to plaintiff's First Amendment claim as it pertains to his religious diet.

2. Ramadan 2004

Plaintiff alleges that defendant Haptonstall violated his First Amendment right to free exercise of his religion when she ordered him to eat his evening meal prior to sunset on the first three days of Ramadan 2004. As explained above, "[i]n order to reach the level of a constitutional violation, the interference with one's practice of religion 'must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.'" *Freeman*, 125 F.3d at 737 (quoting *Graham v. C.I.R.* , 822 F.2d 844, 851 (9th Cir. 1987)).

Defendants do not dispute that Islamic law requires Muslims to fast during daylight hours for the entire month of Ramadan. And, in fact, the record reflects that substantial efforts were made by staff at MCC to ensure that inmates who chose to observe Ramadan could participate in a variety of Ramadan activities, including fasting. While arrangements were made for inmates participating in Ramadan to be called to the dining hall with the last group to eat their evening meal, this arrangement nonetheless resulted in dinner being served prior to sunset.

Defendant Haptonstall states in her declaration that she "was under the impression that inmates celebrating Ramadan could eat as close to sunset as possible." (Dkt. No. 39, Ex. 4 at 2.) When it came to her attention, and to the attention of her supervisor, David Sherman, that the arrangements made for the evening meal were not acceptable, they worked to find a solution. The record reflects that a solution was quickly found and that the timing of the evening meal presented no further problems for the remainder of the month of Ramadan.

Plaintiff's assertions to the contrary, there is no evidence in the record that defendant Haptonstall acted intentionally to burden the practice of plaintiff's religion. The record instead

supports the conclusion that the issue regarding the timing of the evening meal was, at most, a mistake, and does not rise to the level of a constitutional violation. Accordingly, defendants are entitled to summary judgment with respect to plaintiff's First Amendment claim as it pertains to fasting during Ramadan 2004.

Religious Land Use and Institutionalized Persons Act

Plaintiff also asserts in his complaint that he is entitled to relief under the Religious Land Use and Institutionalized Persons Act. The RLUIPA, 42 U.S.C. § 2000cc, *et seq*., provides in relevant part as follows:

> No government, [which is defined to include a State,] shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person . . . is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a). The RLUIPA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

A plaintiff bears the initial burden under RLUIPA of demonstrating that the challenged regulation imposes a substantial burden on the exercise of his religious beliefs. *See Warsoldier v. Woodford*, 418 F.3d 989, 994-995 (9th Cir. 2005). Once the plaintiff makes a prima facie showing that a substantial burden exists, the burden shifts to the government to establish that the challenged regulation furthers a compelling governmental interest and is the least restrictive means of furthering that compelling interest. *Id*. at 995; *see* 42 U.S.C. §2000cc-2(b).

RLUIPA does not define what constitutes a "substantial burden" on religious exercise.

San Jose Christian College v. City of Morgan Hill , 360 F.3d 1024, 1034 (9th Cir. 2004). However, the Ninth Circuit has explained that in order for a regulation to impose a "substantial burden," the regulation "must be 'oppressive' to a 'significantly great' extent. That is, a 'substantial burden' on 'religious exercise' must impose a significantly great restriction or onus upon such exercise." *Id.*

1. Religious Diet

Defendants argue that plaintiff has failed to establish that their refusal to provide halal meat as a part of plaintiff's religious diet constitutes a substantial burden on the exercise of his religious beliefs. The Court concurs that plaintiff has not established that defendants' actions imposed a substantial burden on the exercise of his religious beliefs.

Plaintiff asserts that the eating of halal meat is required by his religion. Thus, the denial of halal meat may fairly be said to burden in some respect the practice of plaintiff's religion. The question, however, is whether defendants' policy constitutes a *substantial* burden on the exercise of plaintiff's exercise of his religious beliefs. Plaintiff has not established that it does.

The ovo-lacto vegetarian diet which is provided to plaintiff does not require him to eat foods which are forbidden by his religion, it simply denies him one component of the diet which he contends should be provided. These facts simply do not satisfy this Court that the denial of halal meat constitutes a *substantial* burden on the exercise of his religious beliefs. This is particularly so given that defendants make a significant effort to provide Muslim inmates such as plaintiff a variety of other ways in which to exercise their religious beliefs as well. Accordingly, defendants are entitled to summary judgment with respect to plaintiff's RLUIPA claim as it pertains to his religious diet.

2. Ramadan 2004

Defendants also argue in their summary judgment motion that their failure to provide the evening meal after sunset for the first three days of Ramadan in 2004 constitutes a substantial burden on the exercise of plaintiff's religious beliefs. Just as the Court concludes that the denial of halal meat as a part of plaintiff's religious diet did not impose a substantial burden on plaintiff's exercise of his religious rights, so to must the Court conclude that requiring plaintiff to eat his evening meal before sunset for the first three days of Ramadan 2004 did not impose a substantial burden. The record makes clear that the issue regarding the timing of the evening meal was acknowledged and resolved quickly once the problem was called to the attention of institution staff.

While it is fair to say that the timing of the evening meal for those three days burdened plaintiff's exercise of his religious rights, this temporary problem did not constitute a *substantial* burden. Accordingly, defendants are entitled to summary judgment with respect to plaintiff's RLUIPA claim as it pertains to Ramadan 2004.

Equal Protection

Plaintiff also alleges that his Fourteenth Amendment right to equal protection was violated by defendants' conduct. Plaintiff asserts that defendants are discriminating against him by providing Jewish inmates kosher food in accordance with the tenets of their religion and denying plaintiff either halal meats or kosher meals in accordance with the tenets of his religion.

In order to state an equal protection claim under § 1983, a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

While plaintiff makes clear that he would *prefer* that his religious diet contain meat (*see* Dkt. No. 48 at 23), he fails to demonstrate that defendants acted with any discriminatory intent or purpose in designating the ovo-lacto vegetarian diet as the diet to be provided to Muslim inmates. Defendants have offered evidence in support of their motion for summary judgment which demonstrates that the decision to offer Muslim inmates an ovo-lacto vegetarian diet is motivated by efficiency and cost considerations and not by an intent to discriminate. (*See* Dkt. No. 39, Ex. 7.) Defendants have also offered evidence that the ovo-lacto vegetarian diet is consistent with the tenets of Islam, at least in the view of some religious experts. (*See* Dkt. No. 40, Ex. 2 at 3; Dkt. No. 39, Ex. 6; Dkt. No. 39, Ex. 5, Attachment B.)

Plaintiff makes no showing that defendants have violated his right to equal protection. Accordingly, defendants are entitled to summary judgment with respect to plaintiff's Fourteenth Amendment claim as well.

Qualified Immunity

Defendants assert in their motion for summary judgment that all of plaintiff's claims are barred by the doctrine of qualified immunity. Qualified immunity protects § 1983 defendants performing discretionary functions from liability for civil damages so long as their conduct does not violate a clearly established constitutional or statutory right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court clarified the test to be applied in evaluating claims of qualified immunity. The threshold inquiry in a qualified immunity analysis is whether the facts alleged, when taken in the light most favorable to the party asserting the injury, show that the defendant's conduct violated a constitutional right. *Id.* at 201. If the

reviewing court concludes that no constitutional right was violated by the defendant's conduct, the court need not inquire further. *Id.* However, if the reviewing court concludes that a constitutional right was violated, the court must then determine whether the right was clearly established. *Id.* And, "[t]he relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202.

This Court is not satisfied that defendants' conduct violated plaintiff's constitutional or statutory rights. However, even if the district court were to conclude that plaintiff has alleged sufficient facts to establish such violations, defendants would still be entitled to summary judgment.

There can be no doubt that the rights to free exercise of religion and to equal protection are clearly established. Likewise, the law is clear that under RLUIPA, no government may impose a substantial burden on the religious exercise of an individual confined to an institution. However, the United States Supreme Court has made clear that the test of "clearly established law" is not to be applied at this level of generality. *See Anderson v. Creighton*, 483 U.S. 635, 639 (1987). In *Anderson*, the Court explained that

> [T]he right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say than an official action is protected by qualified immunity unless the very action in question has previously been held unlawful . . . but it is to say that in light of pre-existing law the unlawfulness must be apparent.

Anderson, 483 U.S. at 640 (citations omitted).

Plaintiff fails to establish that the specific right which he espouses; *i.e.*, the right to a

religious meal which includes meat, is clearly established. And, in fact, defendants have provided the Court with authority which reveals that courts which have dealt with the issue have, by and large, supported the provision of vegetarian diets for Muslim diets. *See Williams v. Morton*, 343 F.3d 212 (3d Cir. 2003) (provision of vegetarian diets to Muslim inmates was based on legitimate penological interests and did not violate First or Fourteenth Amendments); *Kahey v. Jones*, 836 F.2d 948 (5th Cir. 1988) (prisons are not required to respond to particularized religious dietary requests); *Hudson v. Maloney*, 326 F. Supp. 2d 206 (D. Mass. 2004)(granting qualified immunity to officials who did not provide halal meat as a part of Muslim religious diet).

This Court is satisfied, based upon the record before it, that a reasonable prison official could have concluded that an ovo-lacto vegetarian diet was sufficient to meet Muslim dietary requirements. Accordingly, to the extent defendants' actions can be found to have violated the First and/or Fourteenth Amendments, and/or RLUIPA, defendants are entitled to qualified immunity.

Pendent State Law Claims

Plaintiff alleges in his complaint that the conduct of defendants not only violated federal law, but violated state law as well. The Supreme Court has stated that federal courts should refrain from exercising their pendent jurisdiction when the federal claims are dismissed before trial. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). Because defendants are entitled to summary judgment with respect to each of plaintiff's federal constitutional claims, plaintiff's state law claims should be dismissed.

CONCLUSION

For the reasons set forth above, this Court recommends that defendants' motion for

summary judgment be granted, and that plaintiff's complaint and this action be dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 17th day of March, 2006.

Mary Alice Theiler
United States Magistrate Judge